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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,562	11/19/2003	Lawrence J. O'Connor	12267	5059

25570 7590 02/02/2006

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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT PAPER NUMBER

1772

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,562

Applicant(s)

O'CONNOR, LAWRENCE J.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Withdrawn Rejections

Any rejections and or objections, made in the previous Office Action, and not repeated below, are hereby withdrawn.

New Rejections

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1 – 41 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 85 of copending Application No. 10/821,202. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed towards coverings for use on an exterior surface made with fibrous layers, moldable layers and release sheets covering the back surface of the moldable layer. The open language of claims 1 – 41, i.e. comprising, allow for other materials or layer to be present in the construction of the covering.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 – 41 are directed to an invention not patentably distinct from claims 1 – 85 of commonly assigned Application 10/821,202. Specifically, both articles contain coverings for use on an exterior surface are made with fibrous layers, moldable layers and release sheets covering the back surface of the moldable layer.

3. Claims 1 – 41 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 21 of copending Application No. 11/023,412. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed towards coverings for use on an exterior surface that are made with fibrous layers, moldable layers and release sheets covering the back surface of the moldable layer. The open language of claims 1 – 41, i.e. comprising, allows for the edge of the carpeting to be folded underneath as the overall structure of the article is not effected by the folded edge.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 – 41 are directed to an invention not patentably distinct from claims 1 – 21 of commonly assigned Application 11/023,412. Specifically, both articles contain coverings for use

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on an exterior surface are made with fibrous layers, moldable layers and release sheets covering the back surface of the moldable layer.

4. Claims 1 – 41 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 19 of copending Application No. 11/023,413. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed towards coverings for use on an exterior surface that are made with fibrous layers, adhesive layers and release sheets covering the back surface of the moldable layer. The open language of claims 1 – 41, i.e. comprising, allow for other materials or layer to be present in the construction of the covering.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 – 41 are directed to an invention not patentably distinct from claims 1 – 19 of commonly assigned Application 11/023,413. Specifically, both articles contain coverings for use on an exterior surface are made with fibrous layers, adhesive layers and release sheets covering the back surface of the moldable layer.

5. Claims 1 – 41 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 20 of copending Application No. 11/034,255. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because both are directed towards coverings for use on an exterior surface that are made with fibrous layers, adhesive layers and release sheets covering the back surface of the moldable layer. The open language of claims 1 – 41, i.e. comprising, allow for other materials or layer to be present in the construction of the covering.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 – 41 are directed to an invention not patentably distinct from claims 1 – 20 of commonly assigned Application 11/034,255. Specifically, both articles contain coverings for use on an exterior surface are made with fibrous layers, adhesive layers and release sheets covering the back surface of the moldable layer.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

7. Claims 1 – 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “a moldable layer” in claims 1, 2, 5, 10, 12 – 19, 22, 27, 29, 30, 32 – 36 and

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41 – 43 is unclear, which renders the claims vague and indefinite. It is unclear from the claim language and the specification what is meant by moldable layer. Does the layer have to be moldable at all times or just during certain times of the application? Does the layer take on a shape and never shift from the set shape? The specification refers to the layer being made with a hot melt adhesive. Does this mean that the layer may be moldable while heated? What is meant by moldable?

Claims 3 – 4, 6 – 9, 11, 20, 21, 23 – 26, 28, 31 and 37 – 40 are also rejected under 35 U.S.C. 112 2nd paragraph due to their dependency on the above rejected claims.

Correction/clarification is required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 5, 6, 15, 16, 22, 23, 30, 31, 32, 33, 35 – 37 and 41 – 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Haas et al. (USPN 4,554,194).

Haas et al. disclose a elongate composite strip, band, (Column 2, lines 53 – 54) in the form of a supply roll (Column 4, lines 36 – 38) comprising a layer of fibrous floor covering

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material having a fibrous front and back surface (Figure 1, #4; Column 5, lines 28 – 30), a mold layer formed of hot melt adhesive (Figure 1, #2; Column 12, lines 60 – 62) covering the entire back surface at a volume of at least 185 grams per square meter (Column 11, lines 37 – 38) of the strip having a bottom surface with an adhesive property for attaching the fibrous floor covering material (Figure 1, #2; Column 5, lines 46 – 60) with a thickness of at least 5 mils (Column 11, lines 43 – 46) and a release sheet on the attachment layer which is arranged to be removed for the attachment of the attachment layer to the surface (Figure 4, #12; Column 7, lines 10 – 23), wherein the composite has a predetermined length and width, the width being less than the length (Column 2, lines 53 – 54). With regard to the back surface of the covering, the back surface is rough and the moldable layer conforms to the back surface (Figure 1; Column 5, lines 53 – 60). The composite strip is arranged to provide no resistance to bending of the fibrous layer and the attachment layer from a rolled condition to a flat condition for attachment to a generally flat surface and to by follow gravity generally any undulations in the flat surface (Column 9, lines 64 – 68). The moldable layer is formed of hot melt adhesive (Figure 1, #2; Column 12, lines 60 – 62) having a thickness of at least 5 mils (Column 11, lines 43 – 46), while the fibrous layer is mat is a non-woven carpet (Column 5, lines 35 – 37).

10. Claims 30 – 32, 36 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Friedlander et al. (USPN 4,695,493).

Friedlander et al. disclose a elongate composite strip in the form of a supply roll (Column 6, lines 64 – 68) comprising a layer of fibrous floor covering material having a fibrous front and

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back surface (Figure 1, #4, 6 and 8; Column 4, lines 6 – 7), a mold layer formed of hot melt adhesive (Column 3, lines 1 – 5) covering the entire back surface of the strip having a bottom surface with an adhesive property for attaching the fibrous floor covering material (Figure 1, Adhesive layer) with a thickness of 1 to 20 mil (Column 3, lines 29 – 31) and a release sheet on the attachment layer which is arranged to be removed for the attachment of the attachment layer to the surface (Figure 1, #20; Column 2, lines 55 – 57), wherein the composite has a predetermined length and width, the width being less than the length (Column 6, lines 65 – 68). The elongated strip is capable of being rolled longitudinally while remaining resilient and possesses elasticity during the application (Figure 3). The composite strip is arranged to provide no resistance to bending of the fibrous layer and the attachment layer from a rolled condition to a flat condition for attachment to a generally flat surface and to by follow gravity generally any undulations in the flat surface (Column 4, lines 24 – 31). The moldable layer is formed of hot melt adhesive (Column 3, lines 1 – 3) having a thickness of 1 to 20 mil (Column 3, lines 28 – 30), while the fibrous layer is mat formed by needle punching, tufted, woven or carpet (Column 4, lines 62 – 68) and the release sheet is a silicon-coated material (Column 5, lines 1 – 6) as in claims 20, 21, 31 and 36.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3, 4 and 17 – 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haas et al. in view of Friedlander et al.

Haas et al. disclose a elongate composite strip, band, (Column 2, lines 53 – 54) in the form of a supply roll (Column 4, lines 36 – 38) comprising a layer of fibrous floor covering material having a fibrous front and back surface (Figure 1, #4; Column 5, lines 28 – 30), a mold layer formed of hot melt adhesive (Figure 1, #2; Column 12, lines 60 – 62) covering the entire back surface at a volume of at least 185 grams per square meter (Column 11, lines 37 – 38) of the strip having a bottom surface with an adhesive property for attaching the fibrous floor covering material (Figure 1, #2; Column 5, lines 46 – 60) with a thickness of at least 5 mils (Column 11, lines 43 – 46) and a release sheet, a synthetic resin (Column 4, lines 5 – 12) on the attachment layer which is arranged to be removed for the attachment of the attachment layer to the surface (Figure 4, #12; Column 7, lines 10 – 23), wherein the composite has a predetermined length and width, the width being less than the length (Column 2, lines 53 – 54). With regard to the back surface of the covering, the back surface is rough and the moldable layer conforms to the back surface (Figure 1; Column 5, lines 53 – 60). The composite strip is arranged to provide no resistance to bending of the fibrous layer and the attachment layer from a rolled condition to a flat condition for attachment to a generally flat surface and to by follow gravity generally any undulations in the flat surface (Column 9, lines 64 – 68). The moldable layer is formed of hot melt adhesive (Figure 1, #2; Column 12, lines 60 – 62) having a thickness of at least 5 mils (Column 11, lines 43 – 46), while the fibrous layer is mat is a non-woven carpet (Column 5, lines 35 – 37). However, Haas et al. fail to disclose the moldable layer being between about 5 mils

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and 17 mils thick, 13 mils and 17 mils thick, on the average of about 13 mils thick, the release sheet being formed of a silicon coated material and the fibrous layer being a mat formed by needle punching.

Friedlander et al. teach the moldable layer being formed of hot melt adhesive (Column 3, lines 1 – 3) having a thickness of 1 to 20 mil (Column 3, lines 28 – 30), while the fibrous layer is mat formed by needle punching, tufted, woven or carpet (Column 4, lines 62 – 68) and the release sheet is a silicon-coated material (Column 5, lines 1 – 6) for the purpose of forming a carpet that may be formed or reformed by hand into a stable shape and remains unchanged during the life of the article (Column 2, lines 34 – 44).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the thickness of the moldable layer along with the release sheet in Haas et al. in order to form a carpet that may be formed or reformed by hand into a stable shape and remains unchanged during the life of the article as taught by Friedlander et al.

13. Claims 13, 14 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haas et al. in view of Bell et al. (USPN 5,204,155).

Haas et al. disclose a elongate composite strip, band, (Column 2, lines 53 – 54) in the form of a supply roll (Column 4, lines 36 – 38) comprising a layer of fibrous floor covering material having a fibrous front and back surface (Figure 1, #4; Column 5, lines 28 – 30), a mold

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layer formed of hot melt adhesive (Figure 1, #2; Column 12, lines 60 – 62) covering the entire back surface at a volume of at least 185 grams per square meter (Column 11, lines 37 – 38) of the strip having a bottom surface with an adhesive property for attaching the fibrous floor covering material (Figure 1, #2; Column 5, lines 46 – 60) with a thickness of at least 5 mils (Column 11, lines 43 – 46) and a release sheet, a synthetic resin (Column 4, lines 5 – 12) on the attachment layer which is arranged to be removed for the attachment of the attachment layer to the surface (Figure 4, #12; Column 7, lines 10 – 23), wherein the composite has a predetermined length and width, the width being less than the length (Column 2, lines 53 – 54). With regard to the back surface of the covering, the back surface is rough and the moldable layer conforms to the back surface (Figure 1; Column 5, lines 53 – 60). The composite strip is arranged to provide no resistance to bending of the fibrous layer and the attachment layer from a rolled condition to a flat condition for attachment to a generally flat surface and to by follow gravity generally any undulations in the flat surface (Column 9, lines 64 – 68). The moldable layer is formed of hot melt adhesive (Figure 1, #2; Column 12, lines 60 – 62) having a thickness of at least 5 mils (Column 11, lines 43 – 46), while the fibrous layer is mat is a non-woven carpet (Column 5, lines 35 – 37). However, Haas et al. fail to disclose the moldable layer being applied at a coating weight of between about 185 and 465 grams per square meter.

Bell et al. teach the moldable layer being applied at a coating weight of between about 185 and 600 grams per square meter (Column 4, lines 4 – 15), the attachment layer having a coating weight per unit area of greater than 185 grams/sq meter or 300 grams/sq meter (Column 4, lines 4 – 15) and the total material applied in the attachment layer and in between the barrier

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layer and the layer of fibrous floor covering material having a weight per unit area of greater than 300 grams/ sq meter, 400 grams/ sq meter or 600 grams/ sq meter (Column 6, lines 35 – 44) in floor covering made with carpet (Column 1, lines 50 – 52) for the purpose of having a flooring that is sufficient to distribute the compressive weight of objects placed on the face of the floor surface covering (Column 4, lines 4 – 8).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the coating weights of the moldable layer and the attachment layers in Haas et al. in order to have having a flooring that is sufficient to distribute the compressive weight of objects placed on the face of the floor surface covering as taught by Bell et al.

14. Claims 7, 8, 12, 24, 25, 29 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haas et al. in view of Kalwara et al. (USPN 6,426,129).

Haas et al. discloses a covering for an external surface as shown above but fails to disclose the barrier layer having a first width and the fibrous layer having a second width, wherein the second width is greater than the first width, the predetermined width being less than 12 inches, the predetermined length being at least 25 feet, and the release sheet having free edges that extend beyond the fibrous layer and moldable layer to provide a grasping surface at the edges of the composite covering strip.

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Kalwara et al. teach a covering for an external surface wherein the barrier layer having a first width and the fibrous layer having a second width, wherein the second width is greater than the first width (Figure 2, #12 and 14), the composite strip being elongated with a predetermined length and having a predetermined width, the predetermined width being less than the predetermined length (Column 5, lines 7 – 10), the predetermined width being less than 12 inches (Column 5, lines 9), the predetermined length being at least 25 feet (Column 5, line 8), and the release sheet having free edges that extend beyond the fibrous layer and moldable layer to provide a grasping surface at the edges of the composite covering strip (Figure 2, #20) for the purpose of having a release liner that is easily to disengage from the tacky surface of the adhesive layer (Column 5, lines 39 – 46).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the desired lengths and widths of materials in the composite to cover an exterior surface in Haas et al. in order to have a release liner that is easily to disengage from the tacky surface of the adhesive layer as taught by Kalwara et al.

15. Claims 9 – 11, 26, 27, 28 and 37 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haas et al. in view of Tajima et al. (USPN 3,937,640).

Haas et al. discloses a covering for an external surface where the release coating is made of separably strips (Figure 6a) as shown above but fails to disclose the release sheet has a separate central release sheet, the release sheet is formed with a plurality of strips or three

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separably removable strips with one on each edge and one in the center, the middle strip overlapping the edge strips, the width of one strip being less than at least one of the strips.

Tajima et al. teach a covering for an external surface wherein the release sheet has a separate central release sheet, the release sheet is formed with a plurality of strips or three separably removable strips with one on each edge and one in the center, the middle strip overlapping the edge strips, the width of one strip being less than at least one of the strips (Figure 3A and 3B, #14; Column 7, lines (Column 7, lines 49 – 58) for the purpose of rendering the application of the covering for an external surface easier (Column 7, lines 57 – 58).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the various methods of applying a release sheet to the back surface of an external covering in Haas et al. in order to render the application of the covering for an external surface easier as taught by Tajima et al.

Response to Arguments

16. Applicant's arguments with respect to claims 1 – 41 have been considered but are moot in view of the new ground(s) of rejection. However, since some of the prior art is being applied in the new rejections above, the arguments will be responded to below.

With regard to Applicant's argument that Friedlander et al. do not remain resilient and

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does not possess elasticity during application since it is formed in a three dimensional shape for application, Friedlander et al. clearly teach a carpet that may be formed or reformed by hand into a stable shape and remains unchanged during the life of the article (Column 2, lines 34 – 44).

17. In response to applicant's argument that Tajima is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Tajima is reasonably pertinent to the particular problem with which the applicant was concerned with regard to the release sheet has a separate central release sheet, the release sheet is formed with a plurality of strips or three separably removable strips with one on each edge and one in the center, the middle strip overlapping the edge strips, the width of one strip being less than at least one of the strips (Figure 3A and 3B, #14; Column 7, lines (Column 7, lines 49 – 58).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer
Examiner
Art Unit 1772

pln
pln


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

1/30/06